SINGLE BENCH (4)

1 CF 1001

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 4954 / 2006

PETITIONER : **Niranjan Lal Verma**
S/o Aanekram Verma
Aged about 48 years
Caste- Kurmi, Sarpanch
Gram Panchayat- Parsada (Raymond)
Tehsil- Janjgir Dist- Janjgir Champa (C.G)

P.R. No. 4964/06
Presented by Shri H.S. Bhatia
dated 21/04/06

Versus

RESPONDENTS

1. **State of Chhattisgarh**
Through Collector,
Janjgir Champa (C.G)

2. Sub-Divisional Officer
Dist- Janjgir Champa (C.G)

3. Naib Tehsildar
Janjgir,
Dist- Janjgir Champa (C.G)

RECEIVED-COPY
21/4/06
CLERK to A. G. BILASPUR

OATH COMMISSIONER APARNA MALVIYA

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT ORDER OF DIRECTION TO DO JUSTICE IN THE MATTER.

XI-HC-22

32

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.4954 **सन्** 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.9.2006

Shri H.S.Ahluwalia, counsel for the petitioner.

Shri Sumesh Bajaj, Government Advocate for the State/ respondents, on advance copy.

Heard finally with the consent of the parties.

Order dictated as follows :

ORAL ORDER
(11.9.2006)

This petition is directed against the order dated 19.6.2006, passed by the Prescribed Authority during the pendency of a proceeding initiated under Section 40 of the Panchayat Raj Adhiniyam, 1993 for removal of the petitioner, who is a Sarpanch of Gram Panchayat, Parsada. The aforesaid order is said to have been passed under Section 39 of the said Act, by which, the petitioner has been suspended by the said authority.

The brief facts are that on certain complaint, a proceeding under Section 40 of the aforesaid Act was drawn against the petitioner and the enquiry was being conducted by the Prescribed Authority in this regard. The Prescribed Authority, after preliminary satisfaction, issued a show cause notice to the petitioner. It is stated that the petitioner did not receive the show cause notice and he refused to receive the same and a report to this effect was submitted before the Prescribed Authority. The Prescribed Authority, after going through such report, passed the impugned order dated 19.6.2006, saying that the petitioner has failed to receive the notice of the Prescribed Authority and in this

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...W.P.4954... **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

manner, he has not obeyed the order, passed by the said Court, therefore, he is suspended under Section 39 of the said Act.

The petitioner filed a representation against the said order before the Collector, saying that the said order should not be confirmed. The aforesaid representation was dismissed by the Collector and vide order dated 14.8.2006, the suspension order was confirmed under Section 39 (2) of the said Act. Thereafter, the petitioner filed a regular appeal before the Collector and the said appeal was also dismissed by the Collector vide order dated 1.9.2006, passed in a revenue case No. 6-A/89(15) year 2005-2006 (Annexure P- 5).

Learned counsel for the petitioner submits that the aforesaid action, taken by the Prescribed Authority and confirmation thereof by the Collector, are without jurisdiction and the same deserve to be quashed by this Hon'ble Court. He refers to the provisions of Section 39 of the said Act.

On the other hand, learned counsel for the State opposes such prayer. His submission is that the order passed by the Collector was an appealable order and the petitioner has an alternative remedy of appeal before the Director (Panchayat).

I have heard, learned counsel for the parties at length and have also perused the records of the writ petition.

Section 40 of the Panchayat Raj Adhiniyam, 1993 provides for removal of any office bearer of Panchayat. Sub Section (1) of this Section provides that the State Government or the prescribed

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. 4954 **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

authority may after such enquiry as it deem fit to make at any time, remove an office bearer-

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office. There are certain explanations also attached to this Section.

Section 39 of the Act provides as under :

(1) The prescribed authority may suspend from office any office bearer-

(a) against whom charges have been framed in any criminal proceedings under Chapter V-A. VI, *(IX), IX-A, X, XII, Section 302, 303, 304-B, 305, 306, 312 to 318, 366-A, 366-B, 373 to 377 of Chapter XVI, Section 395 to 398, 408, 409, 458 to 460 of Chapter XVII and Chapter XVIII of the Indian Penal Code, 1860 (XLV of 1860) or under any law for the time being in force for the prevention of adulteration of food stuff and drugs, [1][2] Suppression of immoral traffic in women and children, protection of civil rights and Prevention of Corruption); or

[3](x x x)

(2) The order of suspension under sub-section (1) shall be reported to the State Government within a period of

(35)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.4954 **सन्** 2006

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित –4–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ten days and shall be subject to such orders as the State Government may deem fit to pass. If the order of suspension is not confirmed by the State Government within 90 days from the date of receipt of such report it shall be deemed to have vacated.

A perusal of Section 40 as well as 39 of the Act would show that these Sections, nowhere provide that if any office bearer of Panchayat refuses to take/receive summons, notices or a show cause notice, issued by the prescribed authority under Section 40 of the Act, then, he shall be suspended from his post. The view taken by the Prescribed Officer appears to be one strange to the provisions of Section 39 and 40 of the Panchayat Raj Adhiniyam, 1993.

It is a simple preposition of law that unless the statute provides, no action against the interest of a person can be taken by any authority in any proceeding pending against him. The nature of the proceedings as provided under Section 40 is one in the nature of enquiry and the authority, proceeding under Section 40, if comes to the conclusion that the notice issued to the office bearer of the Panchayat is refused by him, then, at the most, the authority, shall be competent to proceed against him ex-parte or shall be competent to hold that the respondent has nothing to say against the notice issued against him and he shall decide the matter on the basis of material placed before him i.e without reply of the respondent and shall pass final order under Section 40 in stead of passing an order of suspension which is not at all

(36)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.:4954 **सन्** 2006

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

within the competence of the authority while dealing in a matter under Section 40 unless specified grounds for passing an order of suspension were prevailing in case.

Admittedly, no grounds for passing the order under Section 39 were prevailing in this case and the order passed by the Prescribed authority on 19.6.2006 appears to be completely without jurisdiction and it cannot be sustained.

In the result, the petition is allowed. The order passed by the Prescribed authority on 19.6.2006 is hereby quashed. In consequence, the order of confirmation as well as the order said to have been passed by the Collector in appeal are also quashed. However, the specified authority is free to conclude the proceedings initiated under Section 40 of the Act in accordance with law.

Sd/-
Sunil Kumar Sinha
Judge

sunita

(पीछे देखिये)

19-9-06